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6 The Estate of Buckminster Fuller

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF BUCKMINSTER  
FULLER,

Plaintiff,

vs.

MAXFIELD & OBERTON HOLDINGS,  
LLC

Defendant.

Case No.: 12-CV-02570 LHK (HRL)

PLAINTIFF'S SUPPLEMENTAL CASE  
MANAGEMENT STATEMENT

Date: June 26, 2013  
Time: 2:00 p.m.  
Courtroom: 8

Plaintiff, The Estate of Buckminster Fuller, submits this Supplemental Case Management Statement pursuant to the Court's June 24, 2013 Order.

**I. Developments in San Francisco Superior Court Case No. CGC 12-522867**

On May 8, 2013, the San Francisco Superior Court granted the Estate's Motion for Relief from Dismissal. The Case Management Conference set for June 19, 2013 was canceled by the court and reset for August 7, 2013. There are no other developments.

1                   **II.        The Settlement Between Fuller and the Trust is Not Grounds for Dismissal**

2                   The Fuller Lawsuit<sup>1</sup> is between Fuller and the now dissolved M & O. Alterra has  
3                   intervened. When M & O dissolved it created the Trust. Fuller entered into a Settlement with  
4                   the Trust. M & O was not a party to, and did not sign, the Settlement: "Fuller and the Trustee  
5                   have agreed to settle all issues, claims and disputes *between them . . .*" Ex. A, Settlement  
6                   Agreement ECF No. 44-1 (Recitals at e).

7                   Alterra wrongly suggests that this Court dismiss the Fuller Lawsuit on the basis of the  
8                   Settlement. But the terms of the Settlement specifically contemplate an attempt by Fuller to  
9                   recover funds from Alterra.

10                  1.           Settlement of Fuller Lawsuit Claim. Upon the execution of this  
11                  Agreement by all of the undersigned Parties, Fuller shall have an allowed  
12                  unsecured claim against the Trust<sup>2</sup> in the amount of \$ redacted (the "Settlement  
13                  Claim"), subject to the following conditions:

14                  a.           In the event Fuller recovers funds from Alterra, there shall be a  
15                  dollar for dollar reduction of the Settlement Claim against the Trust. For example,  
16                  if Fuller recovers \$ redacted from Alterra, the claim against the Trust shall be  
17                  reduced to \$ redacted.

18                  b.           Nothing in this Agreement prohibits Fuller from collecting  
19                  more than \$ redacted from Alterra. In such event, there shall be no remaining  
20                  claim by Fuller against the Trust and the Settlement Claim shall be \$0.00.

21                  Id. ¶ 1.

22                  In paragraph 3(a) of the Settlement, Fuller releases all claims against M & O, the Trustee  
23                  and the Trust "*except for those claims which can be pursued against Alterra.*" Id. ¶ 3(a)  
24                  (emphasis added). The terms of the Settlement are not grounds for dismissal of this case.

25                  If this suit were dismissed, Fuller would have no damage claim against Alterra, because

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<sup>1</sup> Capitalized terms correspond exactly with those used in Ex. A: Settlement Agreement ECF No. 44-1.

<sup>2</sup> Claims against the Trust are pro-rated and payable, if at all, ten years from the date of dissolution: 12/27/2022.

1 (assuming coverage) the collection of funds from Alterra is entirely dependent on resolution of  
2 this lawsuit. To dismiss it is to eviscerate the Settlement and leave Fuller without a meaningful  
3 remedy. The Superior Court action is for declaratory relief only.

4 It is not clear why Alterra feels this case should be dismissed. If the implication is that  
5 Fuller's settlement with the Trust was collusive, then this Court should make that  
6 determination, and do so without a trial. To be enforceable against an insurer, a "judgment need  
7 not be based on a contested or adversarial trial, but may rest upon a default hearing held  
8 following a settlement or an uncontested trial where the insured settled with the claimant and  
9 thereafter presented no defense. These circumstances necessarily involve significant  
10 independent adjudicatory action by the court, thus mitigating the risk of a fraudulent or  
11 collusive settlement between an insured and the claimant." *Pruyn v. Agricultural Ins. Co.*  
12 (1995) 36 Cal. App. 4th 500, 517; *See Carlson v. Century Sur. Co.*, 2012 U.S. Dist. LEXIS  
13 23119, 20-21 (N.D. Cal. Feb. 23, 2012)(determining on summary judgment whether a  
14 settlement was collusive).

16 Alterra intervened here, in part, to protect itself against a potentially collusive settlement  
17 ("The fact that [Fuller] and the [Trust] have settled around Alterra . . . is persuasive evidence  
18 that Alterra's interests are inadequately represented by the parties.") Motion to Intervene ECF  
19 No. 44 at 7:20-23. Having been granted the right to intervene, Alterra should address the issues  
20 on the merits and not seek to deny Fuller its day in court.

21 Fuller has already defeated a motion to dismiss. It should not be dismissed *sua sponte*.

22 Dated: June 25, 2013

23 By: /s/ Thomas A. Cohen  
24 Attorney for the Estate of Buckminster Fuller